6: Grigolia E-4, 5 (no date) 1939 RI1 Georgia RI1

CHAPTER XII

The Law of Contract and Mutual Aid

675 A less developed judicial form among the Georgian Highlanders is the law of contract. To understand the cause of this is not difficult if we remember the joint ownership of their social groups with almost the entire absence of individual property, free labor creating personal capital, and the limited freedom of the individual. Among the Svans, such original native contracts as loan, alienation of property (sale), and barter may be mentioned. They all have Svan names: loan is called *limpshten;* sale, *livde;* and barter is known under the name of *litsadunal.* The other contracts have Georgian names, which indicate their place of origin—Georgia proper—whence they were introduced into Svanetia.

In concluding the contract the act of hand-striking among the Khevsurs and Tushes was such an important factor that its validity did not lose its power even in a case when later it was disclosed that there was fraud on the part of one of the contracting parties. However, there was also the possibility that the hand-striking could be substituted by a person taking the oath for responsibility in the fulfillment of the contract.

675 681 Among the Khevsurs, one of the interesting features of the law of contract was that the responsibilities created by a contract were not limited in time. There were a few cases, in which debts incurred more than two hundred years ago were still outstanding.[1] Here is an example of one of the most characteristic instances. A husband buried his wife without the necessary (according to custom) honors and expenses. During a period of two hundred years the kinsmen of the wife demanded from the kinsmen of the husband the amount of money necessary to cover all funeral expenses, as an indemnity for his neglect. The justice did not

[1] Kovalevsky: a, II, 111.

6: Grigolia E-4, 5 (no date) 1939 RI1 Georgia RI1

reject the demand, and in 1881 it was decreed that an indemnity of three hundred rubles be paid by the great-great-great-grandsons of the culpable husband to the collateral descendants in the fifth generation of the deceased woman. Another case[2] of the same nature is as follows: One Khevsur pretended before a certain Pshav that his grandfather, before the Russian invasion of the Caucasus, had caught in the river Aragua a big salmon, which was so large that he was not able to take it home, and therefore had left it in the water, tied to a stone, intending to go for it with a mule the next day. However, the fish was stolen during the night, according to the claimant, by the grandfather of the Pshav. On this ground the Khevsur demanded satisfaction in the following manner: The salmon was worth a sheep; the sheep during the fifty years' time could have given wool and cheese, equivalent in value to at least ten cows; and besides this there would have been an increase of at least one hundred and fifty head. There was also to be added to the above, five cows as a gift for the judges. The total indemnity to be paid by the Pshav to the Khevsur was fixed at fifty-five cows, or two hundred and seventy-five rubles.

Taking into consideration the different kinds of contracts, we notice at first the extreme rarity of grants amongst Khevsurs, Pshavs, and Tushes. The making of a grant was not permitted to the person who had a legitimate heir in his family. This same situation was found among the Svans also. This may be explained by the small extent of private ownership and the prohibition of alienation of family property, with the exception of gifts to the communal sanctuary, the *Khati*.

In alienation of land property, the law of the preferential purchase was vigorously enforced. The property had to be offered first to the relatives of the person disposing of the property, and in case of a denial on their part, it was offered to neighbors; and only after their refusal was full freedom given to sell the land to a stranger. In selling the property to a stranger who was a member of another community, the Khevsur did not

[2] Zisserman: 226.

6: Grigolia E-4, 5 (no date) 1939 RI1 Georgia RI1

675 regard the purchase as complete and legal until the following
432 customary procedure was observed: both the seller and buyer went to the land offered for sale, and there in the presence of at least one witness, the seller, stamping his foot on the ground, said to the buyer: "May the purchase of this land bring good luck to you." Only after this ceremony was the deed regarded as legally closed.

675 It is necessary to note that among the Svans, unlike the other
432 groups of Georgian Highlanders, the land property sold to a
592 stranger who was not a member of the community could not be regarded as definitely in his possession, because the relatives, and even the neighbors of the family from whom he purchased the property, have full right to claim the property and return to him the purchase price. The land belonging to a family, called *samu*, is very seldom sold by the Svans—only in cases of the most urgent necessity, such as in the payment of blood-*tsor* (*wergild*), or for the arranging of funeral or commemorative ceremonies, called *konch'khar*. Although the sale of the family land might occur in extreme cases, there were household objects which could not be sold under any circumstances, such as the iron chain, called *sakideli* in the Georgian, on which is suspended the cooking pot on the hearth, and the *kerai*, the little iron table used for baking bread. All transactions of sale took place in the presence of witnesses.

675 The loan of property had, among the Khevsurs and Tushes,
426 three different forms: (a) a loan was given without any interest; (b) with certain interest; (c) instead of interest payable in money, the creditor had full right to use for his own benefit the property pawned to him by the debtor as security.

(a) A loan was given without interest with sowing-seed, cattle for agriculture, general work, and with milk products, generally for a certain period of time. In case the loaned property was not returned within the time fixed by both parties, an indemnity equal in amount to one-fifth of the loaned property was demanded.

(b) The Khevsurs and Tushes also made loans at a certain rate of interest, usually amounting to thirty percent, payable annually.

6: Grigolia E-4, 5 (no date) 1939 RI1 Georgia RI1

(c) There was also another form of loan, in which, instead of the interest being paid in money, the creditor had full right to use the pawned property for his own benefit during the whole term of the mortgage. This sort of contract, as it was used by the Pshavs, Tushes, and Khevsurs, must be regarded as a remainder of a legal form well known in ancient Georgia, called *girau*, according to which a creditor had the right of exploitation and benefit from the land pawned to him, from the very first day of the conclusion of the mortgage. It is interesting to note the custom performed at the time of making such a loan.[8] The creditor takes the ear of one of the witnesses, and addressing all who are present, says: "Remember that this man (the name is said) has borrowed money from me."

A loan, called *limpshten* by the Svans, consisted generally of natural objects, such as bread and corn. At the end of the year the debtor was obliged to return what was borrowed plus one-third of its value as interest; in other places, as in the community of Becho, the interest paid for a loan was even as high as fifty per-cent, or half the value of what was borrowed.

Custom clearly distinguished between the act of making a loan and the giving of a thing in preservation. The difference was the absence of the right to use and exploit the thing given for preservation, and the obligation to return the same thing, not its material equivalent. For any sort of damage done to the property given for preservation, the person who took it was responsible for the reparation, the amount of which was determined after the damage was done. Failure to return the property was regarded as a theft, in the same manner as in the Georgian Code of Vakhtang VI, and consequently the penalty was the same as for theft: the culpable person had to pay the indemnity, the amount of which was double the value of the stolen thing.

In hiring a person, the proprietor was obliged, among the Khevsurs and Tushes, not only to supply the hired person with room and board, but also to provide clothing and shoes for him. The contracts with shepherds show some peculiarities: When a

[8] Kovalevsky: a, II, 110.

6; Grigolia E-4, 5 (no date) 1939 RI1 Georgia RI1

shepherd received a flock of sheep or herd of cattle from anyone to care for, he kept them together with his own flock. For his work he received all the milk from both herds; and any increase was divided between the shepherd and the owner of the flock or herd, according to the number of head of cattle or sheep. Among the Pshavs, the shepherd was paid with a part of the increase, which generally consisted of forty young (six-months old) sheep. If a shepherd left the flocks without his master's permission, and if some damage occurred to the flocks at that time, he was requested to make reparation; and in a case where the flocks were seized or driven away by an enemy, the shepherd lost his wages.[4]

The arable land was rented usually under the following condition: the lease-holder deducted from the harvest received by him the amount of sowing-seed used, and half the rest was paid as rent to the owner of the land.

In all the above mentioned contracts, it was permissible for several persons to accept joint responsibility. The one among them who paid first acquired the right to demand from his fellow partners their obligatory share of payment.

A particular feature is found among the Khevsurs, the order of debt security by guarantor (the *mzevali*). The creditor has full right to compel any member of the debtor's community to act as *mzevali*. This law has its foundation in the form of the social organization where group solidarity and reciprocal responsibility were the basis. The person who pays the debt of another man acquires toward the debtor the same rights as the owner of a stolen thing has toward a thief; that is, he has the right to demand from the debtor a payment equal to double the original sum. If the debtor avoids payment again at this time, the *mzevali* (guarantor) chosen by the creditor transfers his rights to a third person, who in turn acquires the right to receive from the debtor not double but four times the sum of his original debt. As an illustration of this custom, we may mention the following fact:[5] A rich Khevsur living in the valley of Ersto, by the name of

[4] Zisserman: 251.
[5] Khudadov: XIV, 1.

6: Grigolia E-4. 5 (no date) 1939 RI1 Georgia RI1

Georgi Bistlauri, related that twelve years ago two of his cousins, on their way to the sanctuary, bought from a Khevsur a lamb for one ruble and twenty kopeks. One of them paid his part of sixty kopeks, but the other, not having the money with him at the time, promised to pay after one year. But he did not keep his word, and the creditor chose a *mzevali,* who in turn chose another, and he another, etc. After twelve years the sixty kopeks of the original debt, the price of the half lamb, was transformed into that of sixty cows, or its equivalent—six hundred rubles—which makes one thousand times the original sum. Eristov[8] gives the following information concerning *mzevali:* "If a person does not pay a debt, or does not meet the obligations required by justice, the offended person goes to a stranger (who has no interest or connection with the proceedings), gives him as a gift one ruble and twenty kopeks, and proclaims him his *mzevali,* and in the meantime takes from him the whole amount of the debt owing to him by the prosecuted person. Three years after his appointment, the *mzevali* goes to the debtor and demands from him, instead of one ruble, twenty-one rubles. . . . In the event the debtor refuses to pay, the *mzevali* approaches another person as *mzevali* and takes from him the sum of money which he should have received from the debtor. In such a manner the office of *mzevali* may be transferred from one person to another, going to as many as twenty or thirty persons, and the debt multiplies twenty times every three years.

As contracts of partnership, we may consider also the rules relating to agriculture, fishing, and hunting.

There are no special restrictions for fishing. Fish are caught in various ways. When the Khevsurs or Tushes catch a large fish, the man who catches it gets the head, and the rest is divided into equal parts among the other fishermen.

Hunting is also free to the Georgian Highlanders.

Among the Khevsurs,[9] who love the dangerous sport of hunting mountain goats, when two or more hunters take part in an expedition, the pelt of the slain animal belongs to the hunter who kills it, the horns are given to the *khati* of the community as a

[8] Eristov: 133.
[9] *Ibid.,* 127.

6: Grigolia E-4, 5 (no date) 1939 RI1 Georgia RI1

thank-offering for the success of the hunt, and the flesh is divided equally among all the hunters.

The Svans have especially elaborate customs connected with hunting, which they regard as a sacred affair. The religious character of the hunt is explained by their belief in the existence of deities for the protection of game and hunters. The hunters are respected by the people who consider them fortunate in enjoying the favor of the deities. According to their conviction, not everyone may succeed in the hunt, but only those who are known for their irreproachable conduct and high morality. The hunter must live a clean life and be careful in his relations with women, who are regarded as unclean. The hunter must have no intercourse with other women than his wife. Even with her he is obliged to cease relations one day before the hunting expedition. He has no right to start for the hunt when any woman in his own family is having monthly issue, nor even if such a woman be one of his own neighbors. It is also necessary for him to avoid the proximity of women with new-born babies until they have been purified by a priest.

Besides avoiding women, the hunter must pay his respects to the killed game and treat the horns, bones, and other parts of the carcass with reverence. If he does not, the hunter will be punished by the god of the hunt, who will make him unsuccessful in all his undertakings. Thus, for example, one hunter from the community of Ushkul, related[8] that ever since his brother became angry at something and threw the leg of a wild goat which he had killed into the dung-heap, he always suffer failure in the hunt.

The hunter goes alone or is accompanied by a helper, who carries his arms and other things and whose duty it is to bring home the game. He has the special name of *mikatsiri*, meaning "the carrier of the leader sack;" the word *katsi* meaning sack.

When the hunter reaches the place of his destination, where he has decided to hunt, he lights candles, fixes them upon a tree or stone along with burning coals, and throws on them the pieces of beeswax. If he has brought flour instead of bread, he bakes

[8] Dmitriev: 168.

6: Grigolia E-4, 5 (no date) 1939 RI1 Georgia RI1

224 476 in which many hunters take part. In such cases, if only one of the hunters kills an animal, he gets the head, neck and pelt, while the remainder is divided equally among them all, with the assistant of the man who killed the animal having the right to choose his portion according to his own taste.

224 476 675 There is another interesting hunting custom among the Svans. When two hunters meet while hunting, if the meeting is spontaneous and not pre-arranged, they may enter into a mutual agreement with the Svan words, *sev esh'khvi*, meaning "one success." After this the fulfillment of the agreement is binding on both of them and has the character of a legal contract. They are thus obliged to divide the spoils of the hunt equally, even if it is killed by only one of them.

They hunt separately all day and meet again in the evening at the place agreed upon. The division of the spoil is not obligatory at the second meeting if the agreement was not concluded at the first, as established by custom, but the successful hunter may "treat" his partner with a portion of meat if he wishes to do so.

224 776 171 Besides the Svans, the other groups of Georgian Highlanders—the Khevsurs, Pshavs, and Tushes—believe in the existence of spirits and protectors of game and hunters. These spirits are called *angelozi*.

Similar beliefs are found among other groups in the Georgian nation as well as among other peoples in the Caucasus, such as the Abkhazes, Ossetes, Circassians, and others.

Thus the Georgians of Megrelia[10] believe in the existence of the "Queen of the Forest," called *Tgashi mapa*, and represented as a beautiful woman with long hair. She is regarded as the patroness of all wild animals, and on her good will depends the success of the hunter. The Abkhazians have a patron of all game called *Ajvepsha*.[11]

224 198 171 It should be noted that in addition to the belief in the existence of forest deities and spirits which protect wild animals, some of the people of the Caucasus possess also a secret hunting language.

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[10] Teptsov: b, 12.
[11] Zvanbai: Kavkaz, 81-2.

6: Grigolia E-4, 5 (no date) 1939 RI1 Georgia RI1

This point is discussed by J. Potocki,[12] J. Reineggs,[13] J. Klaproth,[14] Lulie,[15] A. Dirr,[16] and others. The secret language of hunters, as used by the Abkhazians, was recorded by A. Dirr, and that of the Circassians has been recorded by all the other writers named above.

A contract of partnership among the Georgian Highlanders, similar to that described in the account of the hunting expeditions, is practiced also in their field work. In the eastern part of Georgia, partnerships are formed for the ploughing of fields, because the ploughing in that part of the country demands considerable expense and depends upon the nature of the ground and the construction of the plow itself, which is cumbersome and requires many hands and animals.

In the eastern part of Georgia the cultivation of land is very expensive. Thus, in order to operate a plow it is necessary to have eight ploughmen, ten pair of oxen, five or six workmen, and many other things. Therefore, only wealthy people are in position to accomplish this work without assistance. The people who are unable to do this because of their limited material resources, find a way out of the difficulty by forming a partnership for the execution of the work. One home supplies the plow-shred, called *sakveti,* and two pairs of oxen, called *kevari-khari.* Another supplies leather straps, another supplies the driver of the plow, the fourth is the ploughman himself, who also brings two oxen with him, etc. In such a manner a number of homes put together one plow, called in the Georgian, *guthani,* and they plough for everyone who takes part in the partnership, in turn.[17] In Khevsuria and Pshavia, where the land is cultivated with small, light plows, with only two oxen, it may happen that two men will be able to get the necessary things together: each furnishes an ox, and iron parts of the plow are bought jointly by both partners. The same manner of ploughing, as practiced in the eastern part of

[12] Klaproth: b, 381.
[13] Potocki: 168-69.
[14] Dirr.
[15] Lulje.
[16] Reinegga.
[17] Khakhanov: c, 192-95.

6: Grigolia E-4, 5 (no date) 1939 RI1 Georgia RI1

Georgia, is found also in the district of Zakatali, where it is necessary for each plow to have not less than five pair of oxen.[18]

On the other hand, in the western part of Georgia, where the climate is mild and humid, such partnerships are not used in ploughing, because the plow itself is very light and requires no more than one man and one pair of oxen. However, the climatic and hydrographic conditions in western Georgia, as for example, in Megrelia, Guria and Imerethi, require the mutual assistance of the peasants in other lines of field work.

The cultivation of maize, which is the principal staple food in western Georgia, requires much labor and care. The main work consists in weeding out the over-growth from the fields, which is called *margloba* in the Georgian language, and *majirua* in the Megrelian. The abundance of rain and the rich, fertile soil of the country create the best conditions for the thriving over-growth. The ground soon after the ploughing usually is covered with weeds of all sorts, which grow so fast and thick that in a very short time they threaten to smother the new shoots of corn. In order to protect the crop until it is tall and strong, it is necessary to weed out the whole field from the over-growth at least three times every season; otherwise, the harvest will be lost. To accomplish this work without any assistance on the part of the villagers would be impossible for a single family, and failure to do this meant the loss of the harvest and consequently privation and endangering of the very existence of the family. The way out of this difficult position is found in the custom of mutual assistance and the reciprocal help in the cultivation of the land, which is known under the Georgian name of *nadoba*.

During the time of sowing or weeding out of the maize field, the Megrelian villager calls his neighbors for assistance and every one of them willingly goes to help him. The owner provides a good lunch and heavy supper, with plenty of wine. In the evening, when the day's work is over, they return from the field singing, and sit at the supper table for a long time, singing the national songs and making speeches until late in the night, so that in this

[18] Bakradze: b, 271.

6: Grigolia E-4, 5 (no date) 1939 RI1 Georgia RI1

custom we have mutual assistance with the work, its accomplishment and plenty of "good time." It is interesting to watch a *nadoba* when a group of twenty men get together singing loudly.[19]

The custom of mutual assistance in the field work, the *nadoba*, by the Megrelians, is described also by the Italian missionary of the seventeenth century, Archangelo Lamberti,[20] who lived among the Megrelians for many years. "The land is ploughed and sowed with such calculation," writes Lamberti, "that the harvesting should be finished on the day of Saints Peter and Paul, the principal holiday in Megrelia. Because of the dampness, the weeds grow in abundance, and plenty of work is necessary to clear the ground of them. As this task requires promptness, the separate families would not be able to accomplish it with their own force, and therefore they invite their neighbors to assist them. The villagers who begin the weeding out of the fields invite those neighbors whose fields are not yet ready for the same work, and they are assisted in turn in the accomplishment of the same work when their fields are ready."

There is mutual assistance in Megrelia also in husking the maize. The people assemble at the home where the work is to be done, and after a day's work in the field, the host prepares a big supper, at which all the people who take part in the work have a good time, singing and dancing until late at night.

The forming of partnerships in field work exists not only among the Georgians, as has been described, but also among the other peoples of the Caucasus, such as the Ossetes[21] and others. The partnership for the execution of field work is called *goi*[22] by the Avars; by the Laks of Daghestan mutual assistance in the field work is called *marsha*.[23] The Kumiks of the Terek district practiced mutual assistance in harvesting corn, which they call *bulka*.

Reciprocal assistance and co-operation as described above are evident not only in the field and home work, and not only in one

[19] Borozdin: 7.
[20] Lamberti: 57.
[21] Kovalevsky:
[22] Lvov: 13-14.
[23] Omarov: 916.

A [see cat. 116, pp 171-173 — Analyst]